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90-667

Supreme Court, U.S.

FILED

OCT 24 1990

JOSEPH F. SPANIOI, JR.
CLERK

NO. _____

—IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1990

JAMES A. BRINGLE and NORMA L. BRINGLE,
Petitioners,

vs.,

JULE M. SUGARMAN, Secretary of the
Department of Social and Health Services,
Respondent.

PETITION
FOR WRIT OF HABEAS CORPUS
TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

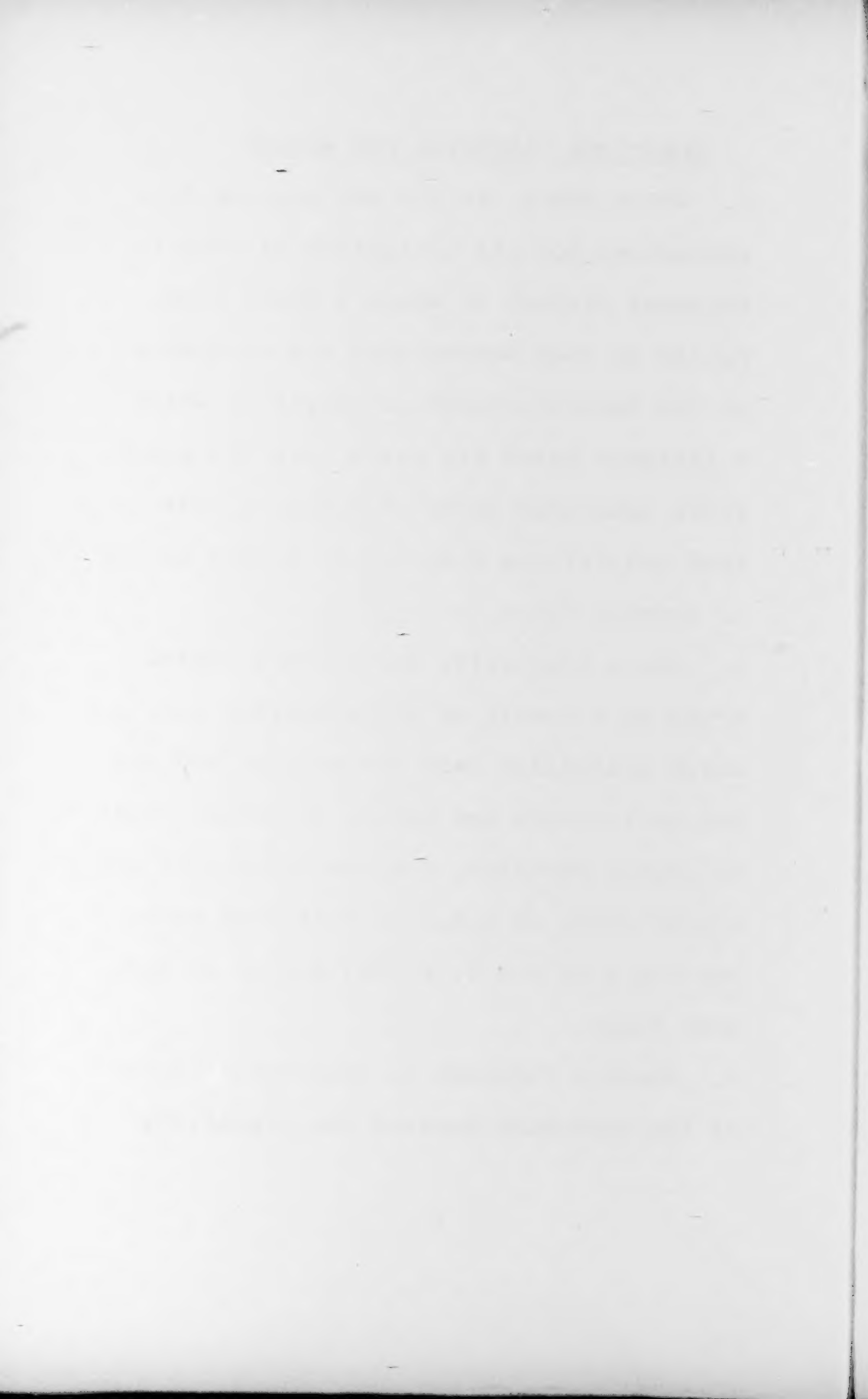
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BEST AVAILABLE COPY



QUESTIONS PRESENTED FOR REVIEW

1. Where State law did not provide fair procedures for the litigation of Constitutional claims, or where a State Court Failed to even acknowledge the existence of the Constitutional principle on which a litigant based his claim, are the plaintiffs precluded under 28 U.S.C. & 1738 from maintaining a 42 U.S.C. & 1983 action in Federal Court.
2. Where Plaintiffs due process claims arose as a result of State hearing in which plaintiffs were not parties and did not participate and had no statutory right to appeal decision, are the plaintiffs precluded under 28 U.S.C. & 1738 from maintaining a 42 U.S.C. & 1983 action in Federal Court.
3. Where a Judgment is rendered in favor of the defendant because the plaintiffs



seeks a form of remedy in state court which is not available to them, or is the wrong remedy and method of state appeal was circumscribed, are plaintiffs precluded under 28 U.S.C. & 1738 from maintaining a 42 U.S.C. & 1983 action in Federal Court.

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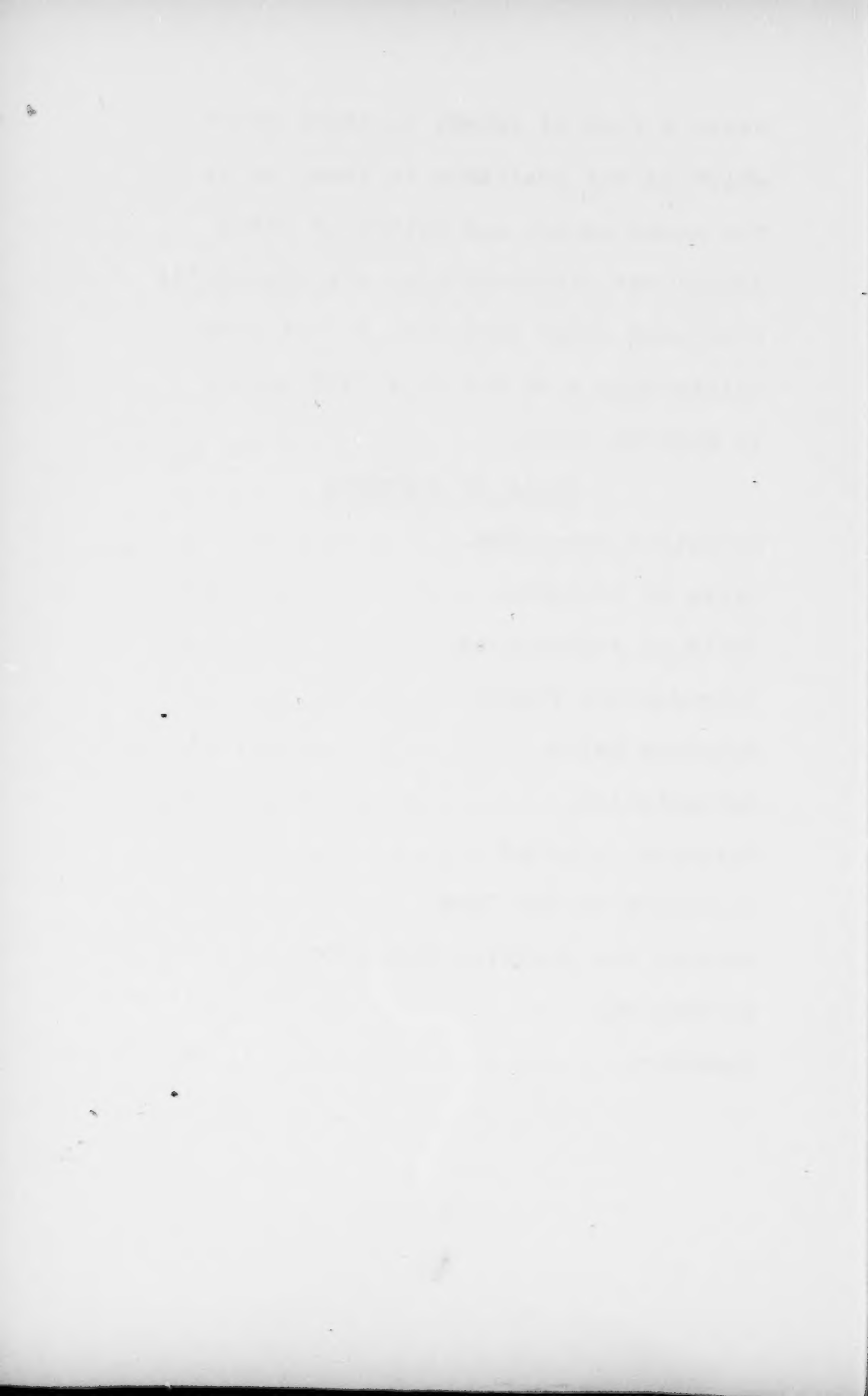


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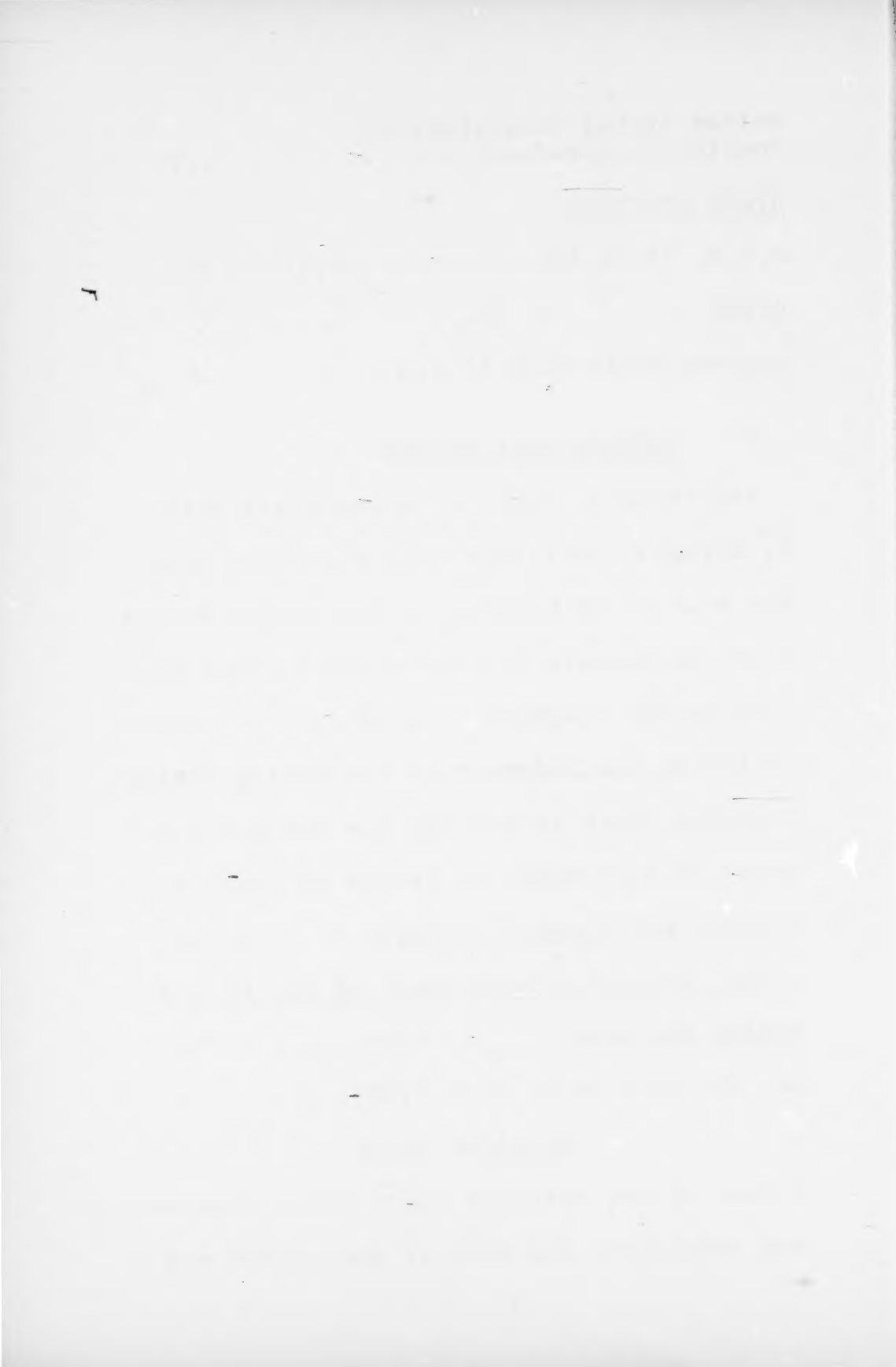
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INTRODUCTORY PRAYER

Petitioners, James A. Bringle and Norma L. Bringle, petitions this Honorable Court for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit reviewing the judgment entered July 31, 1990, affirming the judgment of the United States District Court in and for the Western District of Washington at Tacoma in James A. Bringle and Norma L. Bringle v. Jule Sugarman, Secretary Department of Social and Health Services ____ F. Supp. ____, Dockett No. C88-267T (W.D. Wash.1989).

OPINIONS BELOW

A copy of the District Court Order dismissing complaint, and copy of the report and



recommendations of United States Magistrate are reproduced in the appendix along with a copy of the Ninth Circuits Memorandum Opinion and a copy of the Order denying rehearing.

JURISDICTION

The Judgment of the United States Court of Appeals for the Ninth Circuit was entered on July 31, 1990, and denial of Motion for rehearing was entered on August 31, 1990. This petition has been filed within 90 days of the date of denial for rehearing pursuant to Supreme Court Rule 13.1.4. The jurisdiction of this Court is invoked under Title 28 U.S.C. & 1254 (1).

STATUTE INVOLVED

This petition involves the full faith and Credit Act 28 U.S.C. & 1738, the Civil Rights Act 42 U.S.C. & 1983 and the United States Constitution Fourteenth Amendment.



STATEMENT OF THE CASE

On June 24th, 1986 a hearing was held in Washington State Court to terminate the custodial relationship between the Bringles (petitioners) and their grandchildren. The Bringles grandchildren had been living with them in California for the past one year. The children were removed on August 19th 1986 from the Bringles home in California without written notice to the Bringles, and without affording the Bringles a hearing. The Bringles were not parties to the June 24th, 1986 hearing and did not participate in those proceedings. Having no statutory right to appeal that decision the Bringles sought a substitute remedy by filing a motion to intervene and become parties which would give them a right to a post removal hearing. However the remedy was not available and intervention was denied. The state took judicial notice of

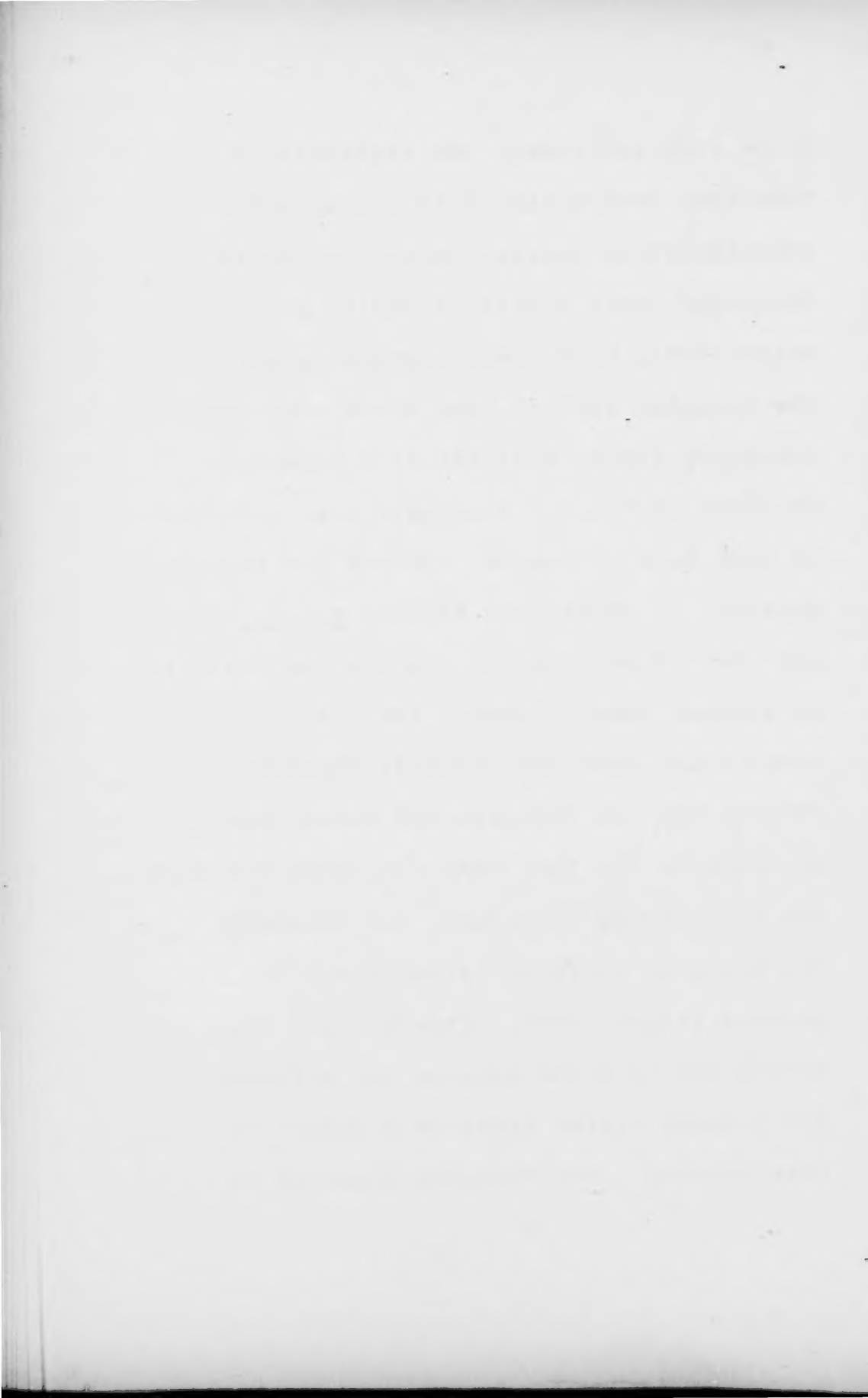


the prior hearing which the Bringles were not parties to and treated the motion hearing as a appeal of the prior hearing and would not allow any due process issues to be litigated that wasn't raised at the prior hearing. The state claimed that the prior hearing was the trial court and this motion hearing was a appeal of that hearing, thus limiting litigation to only those items submitted by the State in prior hearing, which completely prevented any due process claims or any other claims from being raised and litigated on the merits because the Bringles could not have raised those claims at the prior hearing. The Bringles appealed the denial of the motion to the state appellate court and again raised their due process claims. Since their due process claims were not litigated previously the appeals court refused to even mention them in their opinion. Under

Washington rules the appeal was limited to lower court record only for abuse of discretion. The Bringles claimed the motion hearing did not allow personal testimony and no witnesses were allowed and could not have satisfied the due process clause requirements and that the state courts failed to address any of their due process issues that were raised at the motion hearing and subsequent appeal. They further claimed the state courts did not even recognize the constitutional principle on which they were basing their motion to intervene on. The Bringles then filed this 42 U.S.C. & 1983 action in District Court. The jurisdiction in the District Court was invoked under 28 U.S.C. & 1343 (a) (3). The Bringles claimed the state proceedings did not allow a fair opportunity to litigate their due process rights and claimed since no



state judicial remedy was available to them they were entitled to a pre-removal administrative hearing before the state destroyed their constitutionally protected relationship with their grandchildren. The Bringles also claimed since they were receiving Aid to Families With Dependent Children (A.F.D.C.) they were also entitled to some kind of notice, summons and hearing pursuant to Washington Statute R.C.W. 74.12.320, before permanently placing the children in another home. However the District Court ruled that the original dependency hearing was res judicata and based that decision on the fact that the state notified the Bringles by telephone, and reasoned the Bringles could of raised their due process issues their. However this reasoning was in error because the Bringles due process claims arose as a result of that hearing. The Bringles appealed to



the Ninth Circuit arguing they could not have raised their due process claims at the original hearing because they were not parties and did not participate and even if they could of participated in that hearing they could not have raised their due process issues because those issues arose as a result of the hearing itself. The Ninth Circuits ruling did not address that June 24th, 1986 hearing and affirmed the District Courts Judgment based on the motion hearing instead of the prior dependency hearing which the District Court used. The Bringles filed a motion for re-hearing citing the motion to intervene was not a available remedy and the way the state treated the hearing as a appeal of the prior hearing and limited the review, prevented the Bringles from litigating on the merits their claims. The Bringles stated the requirements of the due process clause were not met by that hearing. The



rehearing was denied by the Ninth Circuit and the Bringles filed this petition.

REASONS FOR GRANTING CERTIORARI

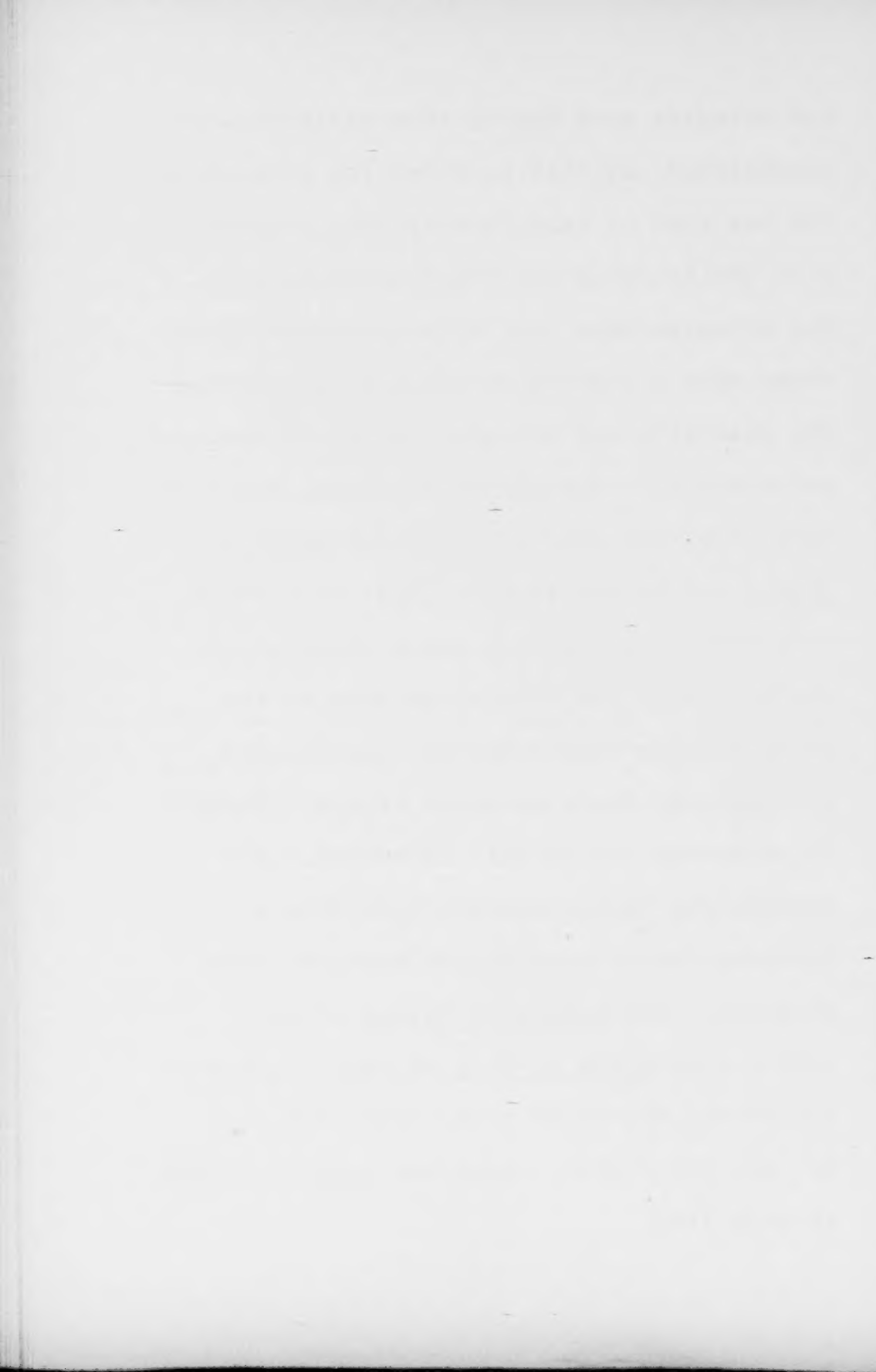
The opinion of the Ninth Circuit regarding this case is in direct conflict with the principles established in Allen v. McCurry 449 US 90, 66 L.Ed.2d 308, 101 S.Ct. 441 (1980). In Allen it states that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a full and fair opportunity to litigate that issue in the earlier case. See Allen at page 317. The Ninth Circuit's ruling holds that the Bringles could have raised their due process claims in the State Court and therefore is res judicata. However, the application of this principle presupposes a full and fair opportunity for a litigant to present their case. In this case most of the due process claims could not be raised or litigated on the merits in the

prior State proceedings. The Bringles cited to Allen v. McCurry and to Kremer v. Chemical Construction Corp. 456 US 461, 72 L.Ed.2d. 262, 102 S.Ct. 1883 at page 280, in both the District Court and the Ninth Circuit Court as authority for their claim that if the full and fair opportunity to litigate is not present then res judicata cannot apply. The full and fair opportunity to litigate as cited in Allen v. McCurry at page 317 is in the context of collateral estoppel or claim preclusion, however it applies equally as well to res judicata. See Kremer v. Chemical at page 280 Footnote number 22. The Ninth Circuits ruling emphasizes that the formal requisites of res judicata are present in the Bringles case, but in so doing it ignores perhaps the most important requirement of all: the full and fair opportunity to litigate previously.

Either the Ninth Circuit overlooked this or they misinterpreted the exception to res judicata as stated in Allen and Kremer. Also the Ninth Circuits ruling did not consider the Bringles claims as stated in their complaint. That complaint does not ask for intervention and intervention is not part of the relief asked for. The intervention issue was settled in State Court. The due process issues were not. Although the state action would be conclusive to the Bringles asserted right to intervene it should not bar the instant action for the declaratory and injunctive relief. The Bringles are basing their claim that if the state judicial process was not adequate to protect their constitutional rights then they have a constitutional right to a administrative hearing with procedural safeguards before permanently destroying their relationship with their grandchildren.



The Bringles were basing this claim on well established law that provides for protection for the type of relationship that existed with the Bringles and their grandchildren. The Bringles were long term Custodial Relatives with a liberty interest in protecting the stability and integrity of their familial relationship. See Rivera v. Marcus 696 F.2d. 1016 (1982 2nd circ.). Also see Smith v. OFFER, 431 US 816,97 S.Ct. 2094,53 L.Ed.2d. 14 (1977). Unlike most cases there was no conflict with the natural parents in the Bringles case as the natural parents had relinquished their parental rights. There relationship was natural in origin. Due process has been extended to include a extended family such as the Bringles case presents. See Rivera v. Marcus at page 1023 citing Moore v. City of East Cleveland, 431 US 494,504-05,97 S.Ct. 1932,1938,52 L. Ed. 2d. 531 (1977). Also see Smith v. OFFER at page 2109.

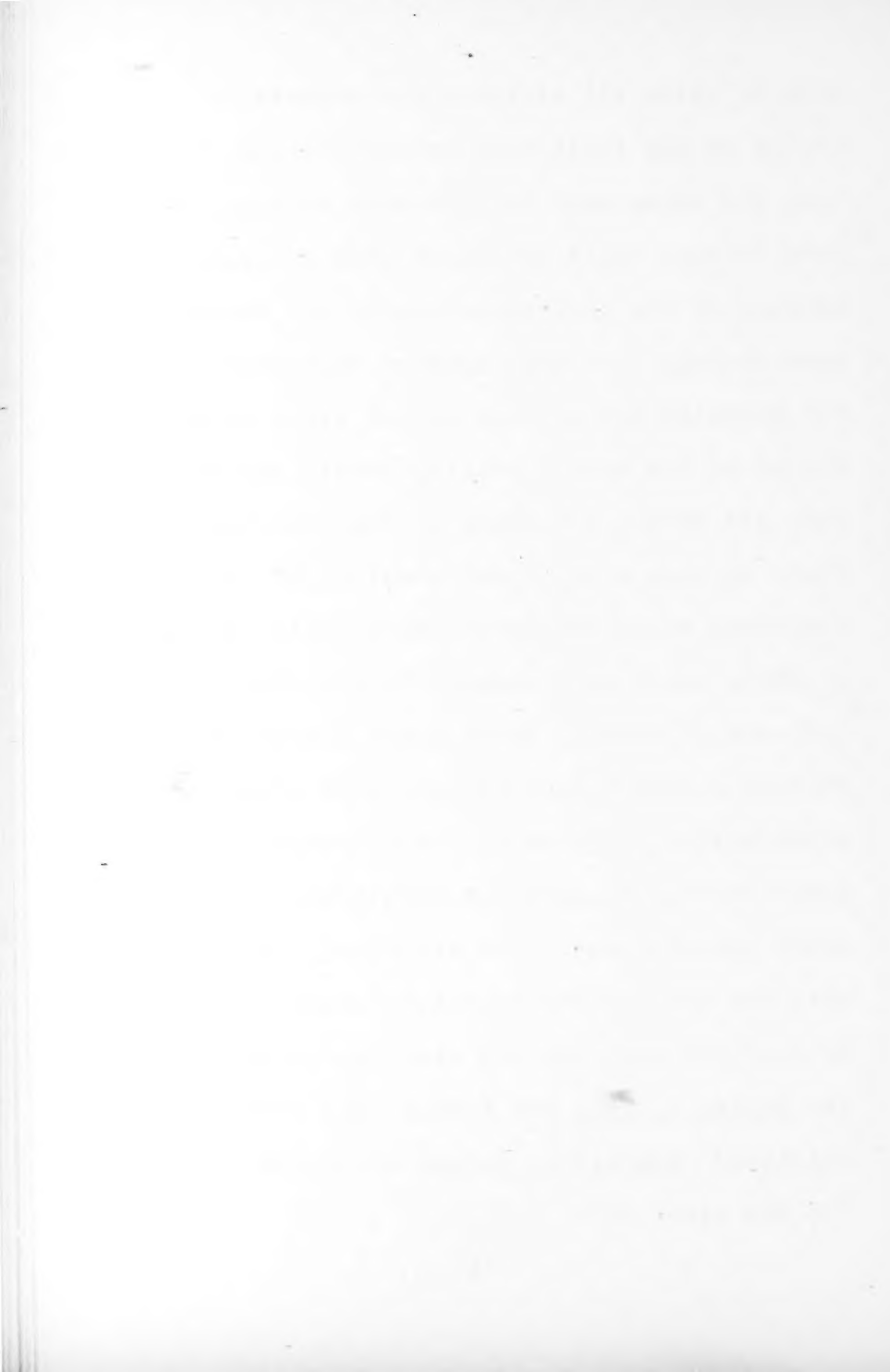


The most compelling evidence to support the Bringles claim that they were unable to raise their due process claims in state court is the state courts refusal to discuss or include in its findings and opinions the claims that the Bringles tried to raise. The Bringles claim for some kind of hearing if intervention was not allowed was based on established state law as well as constitutional law. See R.C.W. 74.12.320 which demands some kind of hearing and summons with regard to state law. The Bringles constitutional claims were based on their long term custodial status and the fact their was no conflict with the natural parents and the fact that the Bringles had a liberty interest in protecting the stability and integrity of their familial relationship to their grandchildren. These claims were raised at the motion hearing but were not addressed by the state court. Further evidence to support the Bringles claim that



they could not litigate their due process claims in state court is that the state failed to even acknowledge the existence of the constitutional principle on which the Bringles were basing their claim for intervention. The court simply ruled the Bringles were not entitled to intervene as a matter of state law. This ruling did not address their constitutional claims. Failure to acknowledge even the existence of the constitutional principle as stated above is contrary to Allen (see Allen at page 17). The Bringles did not file this federal action because intervention was denied, but because they were denied a full and fair opportunity to litigate not only the states reasons for destroying their family, but also their due process claims. The Ninth Circuits ruling is also in conflict with the 11th circuits ruling in Webb v State 850 F.2d.1518 (11th circ. 1988). The Bringles were not

able to raise all of their due process claims at the first hearing and the ones they did raise were ignored same as Webb. They further could not raise them on appeal because of the limited nature of the review same as Webb. It also appears that some of the Bringles due process claims arose as a result of the motion hearing itself and res judicata should not apply to that hearing. There is also a important question of law regarding wrong remedy or unavailable remedy in state court with respect to applying res judicata in Federal Court where plaintiff is seeking a remedy that is available after unsuccessfully trying to find a remedy in state court. It does not appear that this court has addressed this situation. However the Ninth Circuits ruling seems to be in conflict with the 8th circuits ruling. See Warren v. Neel 284 F.Supp. 203 (1968) "affirmed" Kimbell v. Warren 406 F. 2d. 775 8th circ. 1969.



In the Ninth Circuit Brief submitted by the state it clearly shows that the Bringles could not have raised all their claims at the motion hearing. On page 26 and 27 of the states answer brief it points out that the Bringles could have litigated their claims had they filed a petition in the right forum. However no plaintiff who has been denied a opportunity to fully and fairly litigate their claim in one forum is precluded solely because they could have chosen a different forum from the outset. Also in another case Rivera v. Marcus 696 F.2d. 1016 2nd circ. (1982). It appears in the Rivera case there also was no state remedy in state courts for appealing a hearing that terminated her custodial relationship with her relatives. But that did not prevent her Federal action. If the Ninth Circuits ruling stands then the Bringles will be forever barred from at least one hearing in which they could raise

and litigate on the merits their constitutional claims. Both the facts surrounding the States refusal to discuss the Bringles due process claims and the fact they first sought intervention which was not a available remedy, should be considered in applying 28 U.S.C. & 1738. The Bringles also cited Mathews v. Eldridge 96 S.Ct. 893 (1976). See page 905 for authority that a administrative hearing can be required if the state judicial proceedings do not afford adequate protection as the Bringles case presents. Here the Bringles were permanently deprived of a constitutional right by the very means of pursuing the judicial relief itself. While the Bringles were trying to resolve the controversy by waiting to see if they could intervene they were permanently deprived of their right to a fair hearing by the waiting itself. The states ruled intervention would destroy the rights established in the prior hearing which the

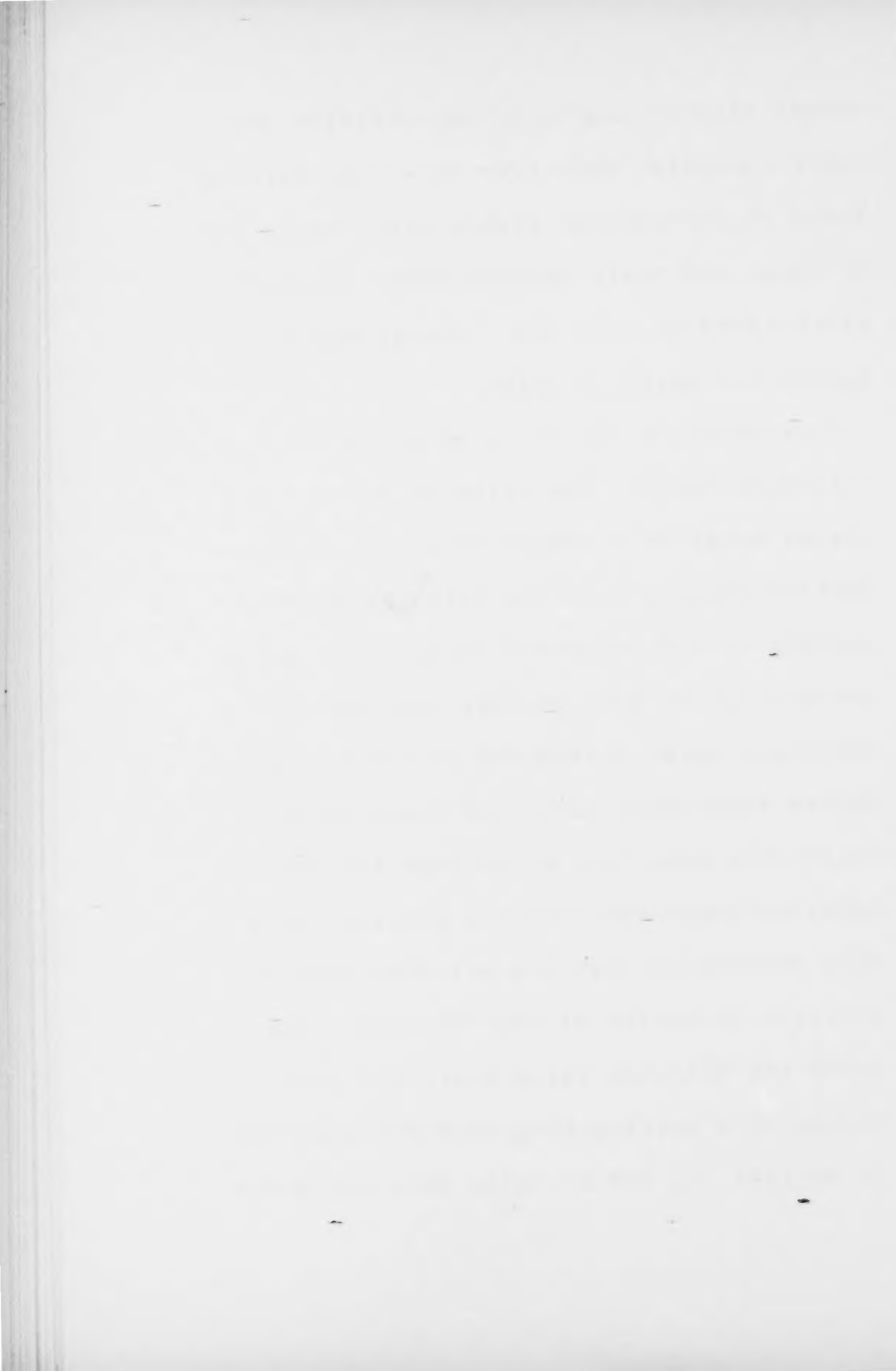


Bringles could not have participated in. Therefore a pre-removal hearing would be the only possible solution to protecting the Bringles and their grandchildrens rights. The Bringles state action itself proves there is no post remedy available. If the Ninth Circuits ruling stands then the state of Washington will be free to remove dependent children from homes of long term custodial relatives who are recieving Federal Assistance under the Aid to Families with Dependent Children program for whatever reason without so much as even a pre-removal hearing or a post-removal hearing. This type of policy also undermines one of the main purposes behind the Federal Governments Aid to Families with Dependent Children program, which is to help children remain in the family environement. This policy not only violates existing state law (under R.C.W. 74.12.320) but also violates the



constitutional rights of the children and their custodial relatives to a fair hearing. These constitutional rights asserted by the Bringles and their grandchildren are well established in case law. See Rivera v. Marcus and Smith v. OFFER.

Consideration should be given to the following facts: The Bringles due process claims arose as a result of a Custody Termination hearing that the Bringles were not parties to and could not raise their due process claims even if they were parties; (The state never determined if the telephone notice supposedly given the Bringles in California some 1200 miles from the hearing location comported with due process, they only determined that the Bringles were not entitled to notice of that hearing. How could the Bringles raise their due process claims at a hearing they were not entitled to notice?); The Bringles were not given



a pre-removal hearing or a post-removal hearing; The Bringles filed a petition for intervention as a means of obtaining a post removal hearing, but intervention was denied; State treated the motion to intervene hearing as appeal of the prior custody termination hearing which limited the hearing to only the evidence submitted by state at the prior hearing; The motion was not a full and fair hearing and lacked the minimum applicable requirements to satisfy the due process clause; The most important claim of all raised at the motion hearing (claim for a constitutional right to a pre-removal hearing before permanently destroying the Bringles extended family) went unanswered in motion hearing and subsequent appeal; The fact the District court as well as the Ninth Circuit and the State were in disagreement as to what hearing was res judicata; The fact that virtually all the Bringles due process claims were

raised in the state courts but the state courts refused comment on them in both their oral discussions and their findings and facts and opinions, and refused to even recognize the constitutional principle on which the Bringles were basing their state action on; The fact the state refused to give the Bringles a hearing subject to their own State law R.C.W. 74.12.320; If the Bringles did have a right to appeal why were the children placed permanently in a adoptive home while the Bringles sought a remedy in state court? Why the Ninth Circuit Courts review did not address the requirements of the due process clause before affirming the District Courts Judgment since the District Courts Judgment was based on the state custody termination proceeding which the Bringles could not have participated or raised their due process claims, because their claims arose as a

result of that hearing; The facts surrounding the motion hearing concerning whether it was a appeal of the prior hearing or if it was a post removal hearing and just what did it decide or what could it decide, or what was the proper method of appeal of the prior custody termination hearing should be considered. Also why the appeal of the motion hearing itself was so severely limited as to ignore all the Bringles due process claims should be considered. There was no full and fair opportunity for the Bringles to litigate the states reasons for destroying their extended family. The Bringles were not entitled to participate in the termination hearing under Washington State Court rules, nor were they entitled to notice of the hearing itself. This denied the Bringles any chance to litigate on the merits any claims or issues that were not raised, (or could not have been raised) at the term-

ination hearing. The fact that the Bringles were allowed to file a appeal did not cure any due process violation, because the appeal was circumscribed. The Bringles current federal claims (which probably could not have been raised any earlier than the state appellate court, if at all) were ignored. The Ninth Circuits Memorandum opinion did not consider the Bringles claim of unfairness, and is based solely on a motion hearing that did not meet even the minimum requirements of the due process clause. The District Courts Judgment is based solely on a hearing that the Bringles could not have participated in, and also did not meet the minimum requirements of the due process clause nor did it have the necessary elements required by state law before applying res judicata. Further the Bringles due process claims arose as a result of the above state hearings and could not have been litigated



in State Court. The Ninth Circuits memorandum opinion is in conflict with the principles this court has established in Allen and Kremer, and is in conflict with the 11th circuits Webb case and the 8th circuits Warren case.

CONCLUSION

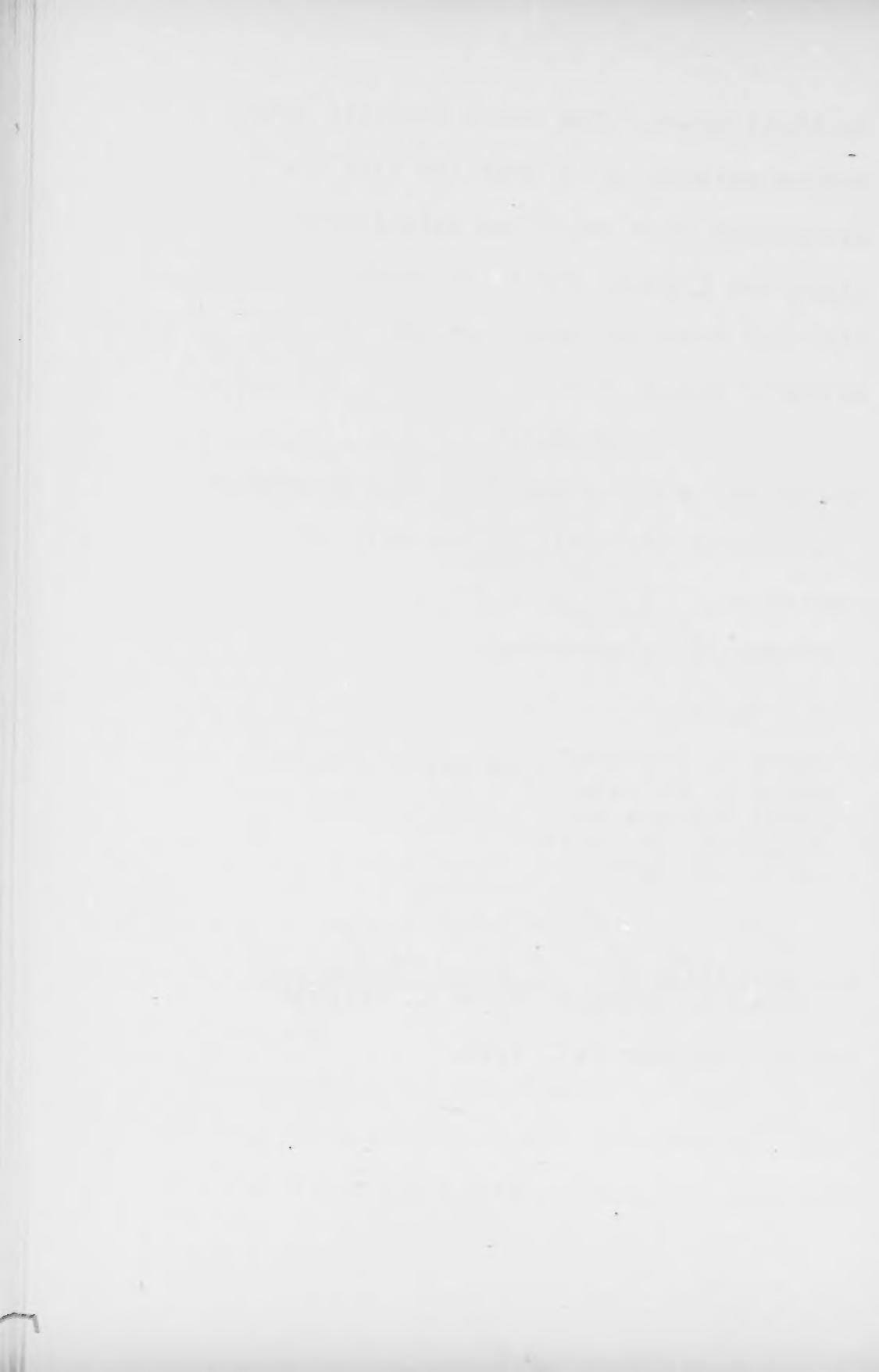
Wherefore, Petitioners Pray this Honorable Court grant the Petition for Writ of Certiorari.

Respectfully Submitted,

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By: James A. Bringle Norma L. Bringle
James A. Bringle Norma L. Bringle

Dated: October 1st, 1990.



APPENDIX



NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 89-35216

D.C. Dockett No. CV-88-267-JET

MEMORANDUM*

JAMES A. BRINGLE; NORMA L. BRINGLE,

Plaintiffs-Appellants,

v.

JULE M. SUGARMAN, Secretary of the
Department of Social and Health
Services,

Defendant-Appellee.

Appeal from the United States District
Court for the Western District of
Washington Jack E. Tanner, District
Judge, Presiding

Submitted April 10, 1990**
Seattle, Washington

Before: Wallace, Hall, and Wiggins,
Circuit Judges.

Filed 7-31-90

James and Norma Bringle appeal the
dismissal of their Section 1983 action
challenging the constitutionality of
Washington's dependency procedures.
We have jurisdiction under 28 U.S.C. &
1291 (1982). We affirm. The district

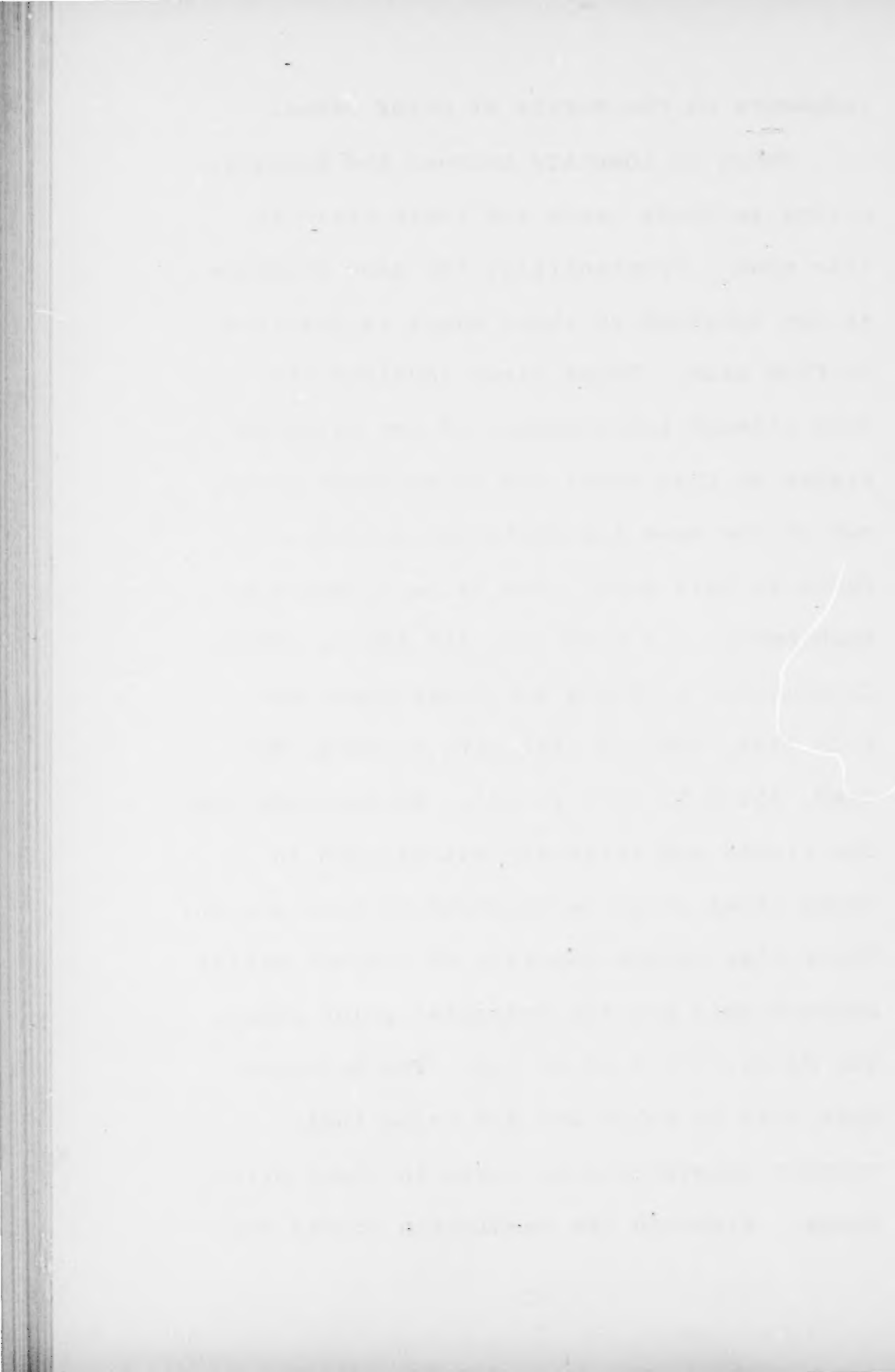


court concluded that the Bringles claim is barred under Washington's res judicata principles. We review this question of law de novo. Guild Wineries and Distilleries v. Whitehall Co., 853 F.2d 755, 758 (9th Circ. 1988). Prior to the Bringles filing of this suit the Washington State superior court held that the Bringles, who were represented by an attorney there, did not have a right to intervene in the dependency proceedings of their grandchildren. In re the Dependency of Jennifer Bollinger b.d. 08-24-87, No. 131567 (Wash. Super.Ct. Jan. 23, 1987); In re the Dependency of Patrick Bollinger b.d. 06-03-83, No. 131566 (Wash. Super. Ct. Jan. 23, 1987). The state court of appeals affirmed. In re the Welfare of Patrick James Bollinger and Jennifer Lynn Bollinger, Nos. 10700-7-II and 10701-5-II (Wash. Ct. App. May 18, 1988). The Washington Supreme Court denied review and the United States Supreme Court denied Certiorari. These are final



judgments on the merits of prior cases.

There is identity between the Bringles claims in those cases and their claim in this case: Substantially the same evidence as was involved in those cases is involved in this case. Those cases involved the same alleged infringement of the Bringles' rights as this case, and those cases arose out of the same transactional nucleus of facts as this case. See *Rains v. State of Washington*, 674 P.2d 165, 168 (Wash. 1983); *Constantini v. Trans World Airlines*, 681 F.2d 1199, 1201-02 (9th circ.), cert. denied, 459 U.S. 1087 (1982). We conclude that the rights and interests established in those cases would be impaired by this action. There also exists identity of subject matter between this and the Bringles' prior cases. See *Rains*, 674 P.2d at 168. The Bringles were able to raise and did raise their current constitutional claim in their prior cases. Although the Washington Courts nec-



essarily rejected it in denying the Bringles relief. See Marino Property Co. v. Port Commissioners of the Port of Seattle, 644 P.2d 1181, 1185 (Wash. 1982). (a prior decision is res judicata as to all claims necessarily resolved in reaching that decision, whether or not the decision explicitly addressed those claims); Migra v. Warren City School Dist. Bd. of Education, 456 U.S. 75 (1984) (section 1983 claims are to be evaluated under general res judicata principles). Finally, although the Bringles, having been denied the right to intervene in the prior cases, were not formally parties to those cases, they were parties to the motions to intervene. It is the state courts denial of these motions that serves as the basis of the Bringles' due process challenge to Washingtons dependency procedures, if interpreted to deny them the right to intervene, violated due process. Thus, the Bringles were parties to the prior cases

for purposes of res judicata analysis.
See United States v. ITT Rayonier, Inc.
627 F.2d 996, 1002 n.7, 1003 (9th cir. 1980)
(applying federal law but noting that Wash-
ington law would dictate the same conclus-
ion) (courts are not restricted by rigid
definitions of parties; one not a party of
record may be bound if he had a sufficient
interest in and participated in the prior
action); Expert Electric, Inc. v. Levine,
554 F.2d 1277, 1233 (2d cir.) (identity of
parties is "a factual determination of sub-
stance, not mere form" to be decided based
on whether the party received notice and an
opportunity to be heard in the prior proc-
eeding), cert. denied, 434 U.S. 903 (1977).
We hold that res judicata principles bar
the Bringles' current suit. Appellants'
motion to supplement the appellate record
with a transcript of the October 9, 1986
Washington court proceeding is denied.
This transcript was not filed with the dis-

strict court or admitted into evidence by that court and, thus, may not be part of the record on appeal. Kirshner v. Uniden Corp. of America, 842 F.2d 1074, 1077 (9th circ. 1988) (citing Fed. R. App. P. 10 (a)). The judgment of the District court is AFFIRMED.

FOOTNOTES:

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel finds this case appropriate for submission without argument pursuant to fed. R. App. P. 34 (a) and 9th Cir.R. 34-4.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NO. C88-267T

JAMES A. BRINGLE,

Plaintiff,

vs.

JULE SUGARMAN, Secretary,
Washington State Department
of Social & Health Services.

Defendant.

Entry Date 1-25-89

REPORT AND RECOMMENDATION OF UNITED STATES
MAGISTRATE

This matter has been referred to
Magistrate Franklin D. Burgess pursuant
to 28 U.S.C. & 636(b)(1)(B) and local
Magistrates Rule MR4. This matter comes
before the court sua sponte.

The plaintiffs filed this civil rights
action (42 U.S.C. & 1983) Challenging the
State's dependency procedures. The plain-
tiffs are the maternal grandparents of
patrick and Jennifer Bollinger, the

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CHICAGO, ILL.

children that were the subject of the dependency proceedings in dispute. In essence, the plaintiffs contend that the State's procedures are constitutionally defective in that they (the plaintiffs) were not given notice (and opportunity to object, present evidence, etc.) of the various dependency proceedings which led to the removal of the children from the plaintiffs' home.

This matter had previously come before the court upon the defendant's Motion to Strike/for more definite statement. In the course of reviewing the Motion, various further briefing was recieved, leading to the filing of an Amended Complaint by leave of court. Upon routine review of the file, it appears that the defendant has filed a Memorandum in Opposition to the Plaintiffs' request for leave to amend that amounts to a motion to dismiss upon collateral estoppel.

grounds. This Memo was evidently misplaced or overlooked; the court granted leave to amend without the benefit of the defendant's briefing. The matters briefed by the defendant are pertinent to both the original and the Amended Complaint. The plaintiffs filed a full response to the defendant's Memo.

On December 27, 1984, both Patrick and Jennifer Bollinger became dependents of the State via Superior Court Order pursuant to RCW 13.34.030(2)(b)&(c).* The plaintiffs challenged the dependency proceedings (seeking custody, etc.) through various administrative procedures, but the children remained state dependents. No judicial appeal was taken from the ultimate entry of the orders of dependency. Nonetheless, the children were placed with the plaintiffs by order of the Superior court. The placement was temporary by the terms of the Order.

As stated by the Washington Court of Appeals
(Division II) in re Bollinger, Nos. 10700-7-
II and 10701-5-II,

On June 17, 1986, the Washington caseworker telephoned the Bringles (California residents) and advised them that there would be an early review hearing on June 24, 1986, to determine whether the children should be removed from the Bringles' home and returned to the state of Washington. The caseworker, the children's guardian ad litem, and an assistant attorney general were present at the hearing. The Bringles did not appear personally or through a representative and no attempt was made to postpone the hearing. Upon consideration of the caseworker's report, guardian ad litem's report, and oral argument, the court determined it would be in the best interest of the children to be returned to Washington and placed in a pre-adoptive home. The court based its determination on evidence which tended to show that Mrs. Bringle was unable to handle the stress of caring for two small children, the Bringles were circumventing any other adoption possibilities, and that the children's mother had been present in the home.

In re Bollinger, supra, at 3. It is the above mentioned review hearing that is the central issue of this action. The plaintiffs contend that they never recieved telephonic

notice from the caseworker regarding the review hearing, and that even had they recieved telephonic notice, such notice is constitutionally deficient under the Due Process Clause.

The defendants argues that the plaintiffs have already had these claims fully adjudicated in the state courts (as reflected in the above Court of Appeals decision), and are thus precluded from relitigating these issues in the federal courts.**

Congress has by statute implemented the Full Faith and Credit Clause of the U.S. Constitution (Art. IV, & 1):

"Judicial proceedings....shall have the same full faith and credit in every court within the United States....." 28 U.S.C. & 1738. It is well recognized that "Section 1738 requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the state

from which the judgments emerged." Kremer v. Chemical Construction Corp., 456 U.S. 461, 466, 102 S.Ct. 1883, 72 L. Ed.2d. 262 (1982). This action obviously seeks de novo-style review of the previous state actions. The state court expressly held that the plaintiffs were not entitled to notice, and that the plaintiffs were nonetheless given notice.*** It cannot be stated from the materials before the court whether the plaintiffs cited to the Due Process Clause in their previous state court proceedings. Even assuming that the plaintiffs had not previously raised the Due Process issue in the state courts, it appears that the plaintiffs would be precluded from relitigating their claim. See The Analysis in Rains v. State, 100 Wn.2d 660, 663-5, 674 P.2d 165 (1983).

Accordingly, under federal law the plaintiffs are precluded from litigating this claim under 42 U.S.C. & 1983.

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Migra v. Warren City School Dist. Board of Education, 465 U.S. 75, 104 S.Ct. 892, 79

L.Ed.2d. 56 (1984) (claim preclusion);

Allen v. McCurry, 449 U.S. 90, 101 S.Ct.

411, 66 L.Ed.2d 308 (1980) (issue preclusion);

The plaintiffs reliance on Rivera v. Marcus, 696 F.2d 1016 (2nd Cir. 1982). That case did not turn upon issues of res judicata or collateral estoppel; evidently the regulatory scheme appealed from allowed no state appeal (Id. at 1019), and the state courts made no prior findings pertinent to the federal claims.

Based on the above, this Magistrate has no choice but to recommend that this action be dismissed under principles of re judicata.

DATED this 10 day of January, 1989.

UNITED STATES MAGISTRATE

FOOTNOTES

*It is important to note that the plaintiffs have never been accused of mistreating the children. The dependency proceedings were initiated due to mistreatment by the children's parents.

**It is interesting to note that the plaintiffs' opposing brief reflects as much dissatisfaction with the state courts as with the defendant. Reply Memo at 3. The plaintiffs state that they have requested U.S. Supreme Court certiorari to challenge the state court proceedings on due process grounds.

***The plaintiffs would obviously like this court to conclude, contrary to the state court findings, that they were never telephoned by the caseworker. Reply Memo at 2. Principles of federal/state comity forbid this court from overruling fairly litigated state court findings of fact.

It is important to note that the
Witchamers have never been accused of
violating the statute. The reason
any suggestion was raised due to
reference to the children's records

was in connection to the fact
the children's records were being
examined. The children's records
were examined with the state
department of health. The
state department of health
has been advised that the
children's records are being
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has been advised that the
children's records are being
examined in the state department
of health.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES A. BRINGLE,

Plaintiff,

vs.

JULES SUGARMAN, Secretary,
Washington State Department
of Social & Health Services.

Defendants.

Case No. C88-267T

ORDER

Entry Date 2-7-89

Plaintiff has filed a complaint herein pursuant to 42 U.S.C. & 1983, and the matter has been referred to the United States Magistrate who has made a Report and Recommendation in this matter.

After reviewing the file herein and the Report and Recommendation of the Magistrate, it is hereby ORDERED:

1. The Report and Recommendation of the Magistrate is hereby approved and adopted by this court.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA
AT WASHINGTON

JAMES A. HARRIS

Plaintiff

vs.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
et al.

Defendants

Case No. 79-107

Order

Case No. 79-107

Plaintiff has filed a complaint herein
captioned as above, and the matter
has been referred to the United States
Magistrate who has made a report and
recommendation in this matter.
After reviewing the file herein and
the report and recommendation of the
Magistrate, it is hereby ORDERED
that the report and recommendation of the
Magistrate be hereby approved and adopted
by this court.

2. This matter is dismissed under principles of res judicata.

3. The Clerk of the Court shall direct copies of this Order to counsel for plaintiff (if any, otherwise to plaintiff) and to counsel of record for defendants.

DATED this 2nd day of February, 1989

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES A. BRINGLE and NORMA L. BRINGLE,

Plaintiff,

vs.

JULE SUGARMAN, Secretary Washington
State Department of Social & Health
Services,

Defendant.

Case No. C88-267T

ORDER

Entry Date 3-14-89

This matter comes on before the above
entitled Court upon Plaintiffs Motion

1. This notice is directed under

Authority of the 1st Act

2. The object of the present notice is to

inform you that the above named

person is now residing at the

address given in the above notice

and is now

being kept in custody by the

Police Department of the

IN THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA
THE DISTRICT OF COLUMBIA
IN THE DISTRICT OF COLUMBIA

AND IN THE DISTRICT OF COLUMBIA

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for Reconsideration of Judgment to Dismiss under Principles of Res Judicata. Having considered the entirety of the records and file herein, it is now ORDERED that Plaintiffs' Motion is Denied. The clerk of the court is instructed to send uncertified copies of this order to all counsel of record.

Dated this 14th day of March, 1989.

UNITED STATES DISTRICT JUDGE

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

JAMES A. BRINGLE; NORMA L. BRINGLE,

Plaintiffs-Appellants

v.

JULE M. SUGARMAN, Secretary of the
Department of Social and Health Services,

Defendant-Appellee.

No. 89-35216 D.C. No. CV-88-267-JET

ORDER

Entry Date August 31, 1990

Before: WALLACE, HALL, and WIGGINS, Circuit

Judges. Appellants' petition for rehearing
is DENIED.